

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EMMA GERALD,	:	MOTION TO VACATE
BOP No. 57900-019,	:	28 U.S.C. § 2255
Movant,	:	
	:	CIVIL ACTION NO.
v.	:	1:13-CV-2928-WBH-ECS
	:	
UNITED STATES OF AMERICA,	:	CRIMINAL ACTION NO.
Respondent.	:	1:06-CR-72-1-WBH-ECS

FINAL REPORT AND RECOMMENDATION

This matter is before the Court on a successive motion under 28 U.S.C. § 2255 filed by federal inmate Emma Gerald. See [Doc. No. 445]. Ms. Gerald is familiar with § 2255(h)'s requirement that she seek and receive permission from the United States Court of Appeals for the Eleventh Circuit before filing a successive § 2255 motion, having had an application to do so rejected earlier this year. See [Doc. No. 444]. "Without [the Eleventh Circuit's] authorization, the district court lacks jurisdiction to consider a second or successive" § 2255 motion. Farris v. United States, 333 F.3d 1211, 1216 (11th Cir. 2003). Ms. Gerald motion does not indicate that she has received such authorization.

Because it plainly appears from Ms. Gerald's filing and the record of prior proceedings that she is not entitled to relief, dismissal of this case is required, see 28 U.S.C. foll. § 2255, Rule 4(b), and the undersigned **RECOMMENDS** that her latest § 2255 motion be **DISMISSED WITHOUT PREJUDICE**.

In a § 2255 proceeding, this Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." 28 U.S.C. foll. § 2255, Rule 11(a). A § 2255 movant "cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c)." Fed. R. App. P. 22(b)(1). "A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make a substantial showing of the denial of a constitutional right, a § 2255 movant must demonstrate "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (citations and quotation marks omitted). Because Ms. Gerald has not indicated that the Eleventh Circuit has authorized her successive § 2255 motion, she has not demonstrated that she is entitled to federal habeas relief or that the issue is reasonably debatable.

The undersigned further **RECOMMENDS** that a Certificate of Appealability be **DENIED** in this case.

The Clerk is **DIRECTED** to terminate the referral of this case to the undersigned.

SO RECOMMENDED AND DIRECTED, this 9th day of September, 2013.

S/ E. Clayton Scofield III
E. CLAYTON SCOFIELD III
UNITED STATES MAGISTRATE JUDGE